

(1)

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

42 WRIT PETITION NO.6856 OF 2022

**SAYED NAZIR AHMED SYED HAMEED
VERSUS
THE STATE OF MAHARASHTRA, THROUGH ITS
SECRETARY AND OTHERS**

....

Mr S. K. Mathpati, Advocate for petitioner;
Mr S. B. Yawalkar, A.G.P. for respondents/State
Mr P. D. Suryawanshi, Advocate for respondent Nos.4 and 5

**CORAM : RAVINDRA V. GHUGE
AND
ANIL L. PANSARE, JJ.**

DATE : 18th July, 2022

PER COURT:

1. The petitioner has put forth prayer clause (B), which reads as under :-

(B) The G.R. dated 24th August, 2017 may kindly be quashed & set aside to the extent of denial of benefits of one or two advance increments to the employees who has been given benefits of sixth pay commission it means its applicability of retrospective in nature By issuing the writ of Certiorari or mandamus or any other appropriate writ or order as the case may be.”

2. Issue notice to the respondents. The learned A.G.P. waives service of notice on behalf of respondent Nos.1 to 3 and the learned Advocate Shri Suryawanshi waives service of notice on

(2)

behalf of respondent Nos.4 and 5.

3. The learned Advocate representing respondent Nos.4 and 5, submits on instructions that, considering the order passed at the Principal Seat, dated 04/05/2021, in Writ Petition (St.) No.1438/2021, filed by Sanjiv R. Patil and others Vs. State of Maharashtra and others, and dated 22/10/2020, passed at the Principal Seat in Writ Petition No.4050/2018, filed by Uday J. Godave and others Vs. State of Maharashtra and others and similar other several orders, this petition may be disposed off in the light of the directions issued in the said orders.

4. In Sanjiv R. Patil (supra), it has been held in paragraph Nos.4 to 6 as under :-

“4. The Petitioners are employees of Zilla Parishad, Sangli. Pursuant to the G.Rs. dated 11th February 1974 and 20th June 1989, the Petitioners, in view of their outstanding work, were granted either one or two advance increments as on 1st October 2006, 1st October 2007 and 1st October 2008. The Petitioners state that the Respondent – State, however, by Circular dated 3rd July 2009 instructed to fix the pay in a revised pay scale as per the recommendation of Sixth Pay Commission without taking into consideration advance increments granted on 1st October 2006, 1st October 2007 and 1st October 2008. It is stated that the Respondent – State, then issued the G.R. dated 24th

(3)

August 2017 and reiterated the instructions issued by Circular dated 3rd July 2009. The contention is accrued and vested rights of the Petitioners cannot be taken away by the impugned G.R.

5. *This Court (Aurangabad bench) in Writ Petition No. 14797 of 2017 (Ganpat Vitthal Dapute and Ors vs. The State of Maharashtra and ors) vide its order dated 11th June 2019, held that the G.R. dated 24th August 2017 will have prospective effect. This Court, accordingly, held that the benefit of advance increments granted as per the policy of the Government prevailing at that time, the same would not be withdrawn on the basis of subsequent G.R. dated 24th August 2017. We have taken the similar view in Writ Petition No. 4050 of 2018 decided on 22nd October 2020.*

6. *The learned counsel for respondent No.4 submits that respondent No.1 had by communication dated 4.12.2020 directed them to seek review of the order passed by this court in aforesaid writ petition. However, in absence of any interim stay order, we do not see any reason to refuse identical relief to the petitioners. In the result, we pass the following order.*

a. *The Respondents are directed to accord the benefit of advance increments granted to the Petitioners as per the policy of the Respondent – State dated 11th February 1974 and 20th June 1989 in the revise Sixth Pay Scale without giving any effect of subsequent Circular dated 3rd July 2009 and G.R. dated 24th August 2017.*

b. *Recovery, if any, made pursuant to the Circular dated 3rd July 2009 or G.R. dated 24th August 2017 from the Petitioners shall be*

(4)

refunded to them.

c. Rule made absolute accordingly.

d. No order as to costs.”

5. In Uday J. Godave (supra), it has been held in paragraph No.6 as under :-

“6. This Court (Aurangabad bench) in Writ Petition No. 14797 of 2017 (Ganpat Vitthal Dapute and Ors vs. The State of Maharashtra and ors) vide its order dated 11th June 2019, held that the G.R. dated 24th August 2017 will have prospective effect. This Court, accordingly, held that the benefit of advance increments granted as per the policy of the Government prevailing at that time, the same would not be withdrawn on the basis of subsequent G.R. dated 24th August 2017. Considering the fact that the Respondent – State has not yet taken any policy decision with regard to issue in question, we are constrained to pass similar order. In the result, we pass the following order.

a. The Respondents are directed to accord the benefit of advance increments granted to the Petitioners as per the policy of the Respondent – State dated 11th February 1974 and 31st October 1989 in the revise Sixth Pay Scale without giving any effect of subsequent Circular dated 3rd July 2009 and G.R. dated 24th August 2017.

b. Recovery, if any, made pursuant to the Circular dated 3rd July 2009 or G.R. dated 24th August 2017 from the Petitioners shall be

(5)

refunded to them.

c. Rule made absolute accordingly.

d. No order as to costs.

e. This order will be digitally signed by the Private Secretary of this Court. All concerned will ct on a digitally signed copy of this order.”

6. The learned Advocate representing the Zilla Parishad, submits that the Zilla Parishad has filed review applications against similar orders.

7. Considering the above, we deem it appropriate to direct the petitioner to submit an affidavit undertaking to the Chief Executive Officer, Zilla Parishad, stating therein that, if the review applications filed by the Zilla Parishad, in the matters in which similar orders have been passed, are allowed, the petitioner would refund the entire benefits that he would receive on account of our order being passed today, within four weeks from the date of such order.

8. With the above direction, this petition is disposed off, by directing the Zilla Parishad, to accord the benefit of advance increments to the petitioner, as per the policy of the respondents/State, dated 11/02/1974 and 31/10/1989 in the revised 6th Pay-scale, without giving effect to the subsequent

(6)

Circular dated 03/07/2009 and the Government Resolution dated 24/08/2017. Since such payment was not made earlier, there is no question of recovery. Needless to state, such payment would be made after the petitioner tenders an affidavit undertaking to the Chief Executive Officer, Zilla Parishad.

(ANIL L. PANSARE, J.)

(RAVINDRA V. GHUGE, J.)

sjk